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C O N F I D E N T I A L SECTION 01 OF 02 ISLAMABAD 001168

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SUBJECT: CODEL LEAHY FIRST TO MEET RESTORED CHIEF JUSTICE

Classified By: Anne W. Patterson for reasons 1.4 (b), (d).

¶1. (C) Summary: On May 25, Codel Leahy -- Senator Patrick Leahy (D-VT), Senator Sheldon Whitehouse (D-RI), and Senator Mark Warner (D-VA) -- and the Ambassador, paid a courtesy call on Supreme Court Chief Justice Iftikhar Chaudhry. This was the first meeting by an official U.S. delegation with Chaudhry since his restoration to the bench in late March. Chaudhry said his forced absence from the bench for nearly two years, under two administrations, was now in the past. The lawyers' movement had also faded as a political force, with boycotting lawyers finally returning to the courts. The movement would always work for the rule of law, Chaudhry told the Senators. He seemed unconcerned by the imposition of the Nizam-e-Adl Regulation in Swat, saying the judges would remain the same, appeals would still come to his Supreme Court, and laws would still have to be constitutional. But the militants had overstepped, violating constitutionally-protected fundamental rights. Whether the Frontier Crimes Regulations in the FATA are repealed or not, Chaudhry was confident that eventually the local populace would demand regularization with the rest of Pakistan. End summary.

"That problem is over."

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¶2. (C) In the first visit by an official U.S. delegation to restored Supreme Court Chief Justice Iftikhar Chaudhry, Judiciary Committee Chairman Senator Leahy congratulated Chaudhry on his long trek to return to the bench. Restoration of the pre-November 3, 2007, judiciary would advance the rule of law in Pakistan, a key component for a still burgeoning democracy, Leahy added. Chaudhry concurred that democracy would not long survive where a judiciary was not also independent. But in reference to his removal by former President-General Pervez Musharraf and the delayed reinstatement by President Asif Zardari, Chaudhry concluded, "That problem is over."

¶3. (C) Chaudhry went further, predicting the once politically potent lawyers' movement would recede. The lawyers would return to the courts and/or their respective political parties. "It is no longer a political force," he said, but would continue to speak out for the rule of law, the movement's only agenda, Chaudhry claimed. For his part, Chaudhry committed to traveling the country between hearing sessions to speak to bar associations. He was also excited about the June 1 implementation of a new nationwide judicial policy, which, among other things, aimed to ensure speedy justice and put a dent in years' of case backlogs.

On Swat and FATA

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14. (C) Asked his opinion of the same popular call for speedy justice in Swat, Northwest Frontier Province (NWFP), leading to the acceptance of the new Nizam-e-Adl Regulation, Chaudhry claimed the basic system remained intact -- the old judges would stay on the bench and many old laws and procedures would continue to be enforced. "The Swatis can have their own laws," he proclaimed, but those laws would still need to be constitutional and appeals would still go to the provincial High Court and his own Supreme Court.

15. (C) And after the Swat operation was completed by the Pakistan military? "The regular courts never disbanded," Chaudhry claimed, and as soon as it was safe again, the judges, even those recently appointed by the militants, would return. But the militants themselves had made a fatal error, Chaudhry added, violating fundamental rights protected in Pakistan's constitution. He willingly took suo moto (independent) notice of the now famous flogging incident, which occurred in the first week of the new Regulations. The taliban had not adhered to the system and "had crossed the line," Chaudhry concluded.

16. (C) Asked if the Frontier Crimes Regulations (FCR) for the Federally Administered Tribal Areas (FATA) should be repealed or amended, Chaudhry predicted that the local populace would soon demand the same code as applied in the rest of the country. The change would come sooner if his commitment to reform the national judiciary came to fruition. The majority system, with appeals coming to his Supreme Court, would some

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day be applied in FATA too. Case in point, Chaudhry added: his own home province of Balochistan once fell under the FCR; the Balochis of their own accord and at their own pace eventually asked for the Pakistan Penal Code instead.

17. (U) Codel Leahy did not clear this cable.

PATTERSON